

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

DIVISION 6

HONORABLE THOMAS B. LINDBERG

CASE NO. CR 2008 1339

JEANNE HICKS, CLERK

BY: M. J. Merlitz, Deputy

DATE: January 9, 2009

FILED

Date: January 9, 2009

5:00 O'Clock P.M.

JEANNE HICKS, CLERK

BY: M. J. Merlitz

DEPUTY

TITLE:

STATE OF ARIZONA,

Plaintiff,

-vs-

STEVEN CARROLL DEMOCKER,

Defendant.

COUNSEL:

Yavapai County Attorney (e+)

By: Mark Ainley

(For Plaintiff)

John Sears

Larry A. Hammond, Esq.

OSBORN MALEDON, P.A.

2929 North Central Avenue, 21st Floor

Phoenix, AZ 85012-2794

(For Defendant)

HEARING ON:

Pending motions

NATURE OF PROCEEDINGS

COURT REPORTER

Roxanne Tarn

START TIME: 1:02 p.m.

APPEARANCES: Mark Ainley, Deputy County Attorney – Criminal Division
Jack Fields, Deputy County Attorney – Civil Division
Steven Carroll Democker, Defendant (in custody)
Larry A. Hammond, Counsel for Defendant
David Bodney and Chris Moeser, Counsel for ABC, Inc.

This is the time set for Hearing on Request of ABC to allow camera coverage of proceedings.

Mr. Fields, counsel for the State notes that also pending is a motion for a public record request. Defense counsel notes that he is not prepared to handle that motion today. After discussion, the Court notes that that request will be addressed next week. Mr. Fields is excused.

There being no objection, Defendant's exhibit 1 is admitted into evidence.

Argument is presented on the request to allow camera in the courtroom.

Ruling: The Court has considered the issues that are addressed to the Court in connection with the case, the right of both sides to a fair trial the first time, without the need for subsequent trials because of error and the right to privacy of the parties and witnesses. But in that regard this is a public setting and a public courtroom. The public has a right to observe its government, the judicial branch at work in conjunction with defense counsel, the State's representatives, law enforcement and the County Attorney's Office. The Court notes it has not been presented with anything that would lead the Court to believe that somebody as a result of coverage by cameras in the courtroom would be less safe. Though there may high feelings about the case that could impact the safety of a witness, the Court at this point has not been shown that, so it is only something in potential that may be addressed later by the Court.

Likelihood that coverage would distract participants or detract from the dignity of the proceedings – if the camera is indeed silent, if there are not a lot of wires and cords and the like that concerned Mr. Ainley in his prior experience with the cameras in the courtroom, then the Court does not see that there would be any less dignified proceedings in the courtroom. To the extent that it is placed in the back of the courtroom

approximately where the closed and locked back door is, is the most likely place in this courtroom for that, which would position it in a way where it would be less affected by people coming and going in the right-hand side of the courtroom as you face the bench and would be in a position where it would not by accident or otherwise be taking pictures of jurors.

The Court acknowledges the inadequacy of this particular courtroom and of the Yavapai County courthouse generally for the types of videography or camera work that newer courthouses are able to provide. The Court does not find that that would be something that would prohibit cameras in the courtroom in this particular case and this particular courtroom.

The Court finds that the request was timely and the Court needed to address the issue in a timely fashion. The fact that part of the hearing is done, the Court does not find affects the rights of either side to a fair trial. To the extent it affects an editorial prospective on the case, there are ways to adjust for that also, such as ordering a copy of the transcript and providing a complete report using the outtakes that are available and speaking over the top of something like that. The Court notes that is a matter for the First Amendment and for the Fifth Estate (press) and not a matter for the Court. The Court indicates it recognizes the Court loses a certain degree of control and is not in complete control over what the public receives from the media.

To accommodate the Defendant's interests in fair proceedings, the Court **ORDERS** Defendant to appear at the subsequent proceedings in civilian garb to be provided by his defense counsel so long as it is in keeping with the rules of the Sheriff's Office in providing adequate safety and security for the public and for Mr. Democker. In essence, the Defendant may dress as if this were a trial for next week's proceedings so long as defense is able to provide appropriate attire subject to the Sheriff's Office regulations. The Court **directs** that that dressing out take place prior to coming over to the Courthouse Plaza area so that if there is photograph of the defendant between the jail van and portals of the courthouse, the prejudicial effect would be minimized by the defendant being dressed in civilian garb rather than jail clothing.

The Court notes it is not prohibiting electronic or still photographic coverage of these proceedings. Though it is not stated as a presumption by view of Rule 122, it in essence, establishes a presumption that such coverage would be the preference because it says the Judge may limit or prohibit such coverage after making specific on record findings that there is a likelihood of harm arising from one or more of the above factors that outweighs the benefit to the public of camera coverage.

The other requirements of Rule 122 and limitations, the Court adopts. In general for any juvenile witnesses the Court **ORDERS** that unless another motion is brought by the media that the adaption of videography that would fuzz out the faces and not reveal the faces of the juvenile witnesses will be adopted for purposes of this case. If ABC or other media want to bring that to the Court's attention for any particular witness and want to be able to disclose that without fuzzing out the face, another motion will need to be brought. The Court indicates it will make an across-the-board ruling at this point with regard to that. No other photography or videography of the defendant, witnesses, counsel, judge in the courthouse will be permitted other than in the courtroom. So no photograph of counsel shall occur out in the hallways for example.

In accordance with the rule itself, there shall be no audio recording or broadcasting of conferences in the building between attorneys and the client, between attorneys for either side, or Jury interviews at all.

The cameras must not produce a distracting sound. To the extent possible, no wires across the area where people in the gallery may be walking for safety purposes and otherwise will be permitted.

As far as ABC is concerned, the Court indicates it will restrict the filming the comings and goings of the defendant from the jail van into the courthouse portals without prior permission from the Court. Counsel may apply again if they believe it is necessary. The Court restricts the media from taking pictures on the courthouse area proper, so within the perimeter of the sidewalk that is around the Courthouse Plaza. Pictures may be taken on the sidewalk or closer to the street than the exterior sidewalk but not within the exterior

sidewalk of the Courthouse Plaza grounds.

Defense counsel requests the restraints not be filmed. Counsel indicates he would prefer Defendant not be restrained while in the courtroom or that any restraints not be visible from a camera. The request is discussed. The Court indicates it will not restrict the Sheriff from using manacle restraints in the pretrial hearings if that is what the Sheriff's Office believes is necessary for purposes of security for the current hearing. The media is not to photograph or video record showing manacle restraints of the defendant. The Sheriff's Office is authorized if he believes or the Sheriff's staff believes that it is allowable within security consideration to relieve the defendant of the manacles. Even if they don't, the intervening party ABC is directed not to take pictures of the defendant showing the manacles if they are present.

The deputy in the courtroom indicates he will address this matter with regard to the manacles with the command staff for final decision.

The Court notes that it will reserve the issue as to whether restraints are removed while defendant is in the courtroom during hearings and does not Order that at this point.

Mr. Bodney requests the Court to clarify its ruling with regard to use of cameras inside the exterior side walk surrounding the courthouse building and the ruling that there be no video of the defendant from the van to portals of the courthouse. The Court indicates it will withdraw that part of it so long as the other protections are in place to make sure there isn't prejudice that results from that. If the media is out on the sidewalk and take a picture where the Defendant is leaving, the Court indicates it doesn't believe it can prevent them from doing that under the First Amendment or proper exercise of the Court's discretion under Rule 122.

Defense counsel makes a record of his objections to Defendant being photographed getting out of the van and going into the courthouse.

The Court notes it will leave it to defense to get civilian clothing up to Mr. Democker at the jail for Tuesday's hearing.

END TIME: 2:56 p.m.

Thereafter: FAILURE TO ABIDE BY THE ABOVE ORDER WILL RESULT IN LOSS OF PRIVILEGE TO RECORD BY VIDEO OR OTHERWISE PHOTOGRAPH THE PROCEEDINGS.

cc: Victim Services (e+)
YCSO – Detention records (faxed 1-12-09) ✓
David Bodney and Chris Moeser, STEPTOE & JOHNSON, counsel for ABC
Collier Center, 201 East Washington Street, Suite 1600, Phoenix AZ 85004-2382